

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

TRUSTEES OF BRICKLAYERS LOCAL
NO. 3 PENSION TRUST, et al.,

Plaintiffs,

v.

JAMES L SISCO, et al,

Defendants.

No. C 04-00694 WHA

**STIPULATION AND ORDER
RE ENTITLEMENT TO
ATTORNEY'S FEES AND
COSTS**

Pursuant to Federal Rule of Civil Procedure Rule 54, Northern District Local Rule 54 and this Court's Guidelines For Attorney's Fees Motions In Cases Before Judge William Alsup dated May 10, 2001, Thompson Pacific Construction Inc., Swinerton Builders, The United States Fidelity And Guaranty Company and Colonial American Casualty And Surety Company (hereinafter "UCSF Defendants") and Plaintiffs, by and through their attorneys of record, having met and conferred for the purpose of attempting to resolve disputes with respect to the motion for attorney's fees and costs, hereby stipulate and agree as follows:

1. A request for attorney's fees and costs is authorized by the following provisions of California law: California Labor Code §§ 218.5 and 1776; California Civil Code §§ 3196, 3248 and 3250; and, by the express terms of the payment bonds issued by The United States Fidelity And Guaranty Company and Colonial American Casualty And Surety Company.

2. Plaintiffs are the prevailing party in this action and Plaintiffs are entitled to recover, and UCSF Defendants are liable for, Plaintiffs' reasonable attorney's fees and costs of this action.

3. A formal motion and hearing on "entitlement to fees" is not necessary because of this stipulation.

4. Only the issue of the amount of Plaintiffs' attorney's fees and costs remains at issue.

5. UCSF Defendants reserve the right to offer the defense that Thompson Pacific made an offer of judgment pursuant to Fed.R.Civ.P. 68 and that for reason of that offer of judgment Plaintiffs may be liable to UCSF Defendants for UCSF Defendants' attorney's fees and costs. This stipulation is subject to the reservation described in the preceding sentence and shall not prejudice or constitute a waiver of that defense and claim by UCSF Defendants.

6. For reason of counsels' trial and vacation schedules, the parties request that the Court adopt the following schedule for achieving the "second-stage milestones":

(a) Last day to meet and confer regarding reasonable fee award
(Guidelines ¶ 6): June 10, 2005;

(b) Last day to file declaration and comply with paragraphs 7–12 of
the Court's Guidelines: June 30, 2005;

(c) Last day to file opposition declaration and counter-analysis
(Guidelines ¶¶ 12–13): July 15, 2005;

(d) Last day to complete meet and confer process (Guidelines
¶¶ 14–15): July 22, 2005;

(e) Deadline to file under seal proposals for fee award (Guidelines
¶ 15): August 5, 2005;

(f) Last day to meet and confer after exchange of proposals and select
a special master (Guidelines ¶ 15): August 12, 2005.

1 This schedule shall replace the dates previously set in this action by the Court's prior
2 case management order.

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4 Date: May 31, 2005.

Lynch, Gilardi & Grummer

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6 By: s/
James Sell
7 Attorneys for Swinerton Builders,
The United States Fidelity And Guaranty Company
8 and Colonial American Casualty And Surety
Company

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10 Date: May 31, 2005.

Miller Morton Caillat & Nevis

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12 By: s/
David Kornbluh
13 Attorneys for Thompson Pacific Construction Inc.

14 Date: May 31, 2005.


Katzenbach & Khtikian

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16 By: s/
Kent Khtikian
17 Attorneys for Plaintiffs

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19 **ORDER**

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21 **PURSUANT TO THE STIPULATION OF THE PARTIES, IT IS SO ORDERED.**

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23 Dated: June 7, 2005.

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WILLIAM ALSUP
25 UNITED STATES DISTRICT JUDGE
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